

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL. No.1249 OF 2006

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Between:

State of Andhra Pradesh,
represented by Secretary,
Ministry of Major Irrigation,
Secretariat, Saifabad,
Hyderabad and others.

..... Appellants

AND

Vepparla Sengaiah and others.

.....Respondents

:: J U D G M E N T ::

Counsel for the appellants : Government Pleader for Land
Acquisition.

Counsel for the respondents : Sri P.S.Rajasekhar

12th October, 2006

Per G.S.SINGHVI, C.J.

This is an appeal by the State of Andhra Pradesh and two others for setting aside order dated 28-4-2006 passed by the learned Single Judge whereby he partially quashed the proceedings initiated by the appellants for acquiring the land of the respondents.

The respondents are agriculturists by profession. They own very small extents of land in villages of Kongapadu and Nagulapadu of Addanki Mandal, Prakasam District. The particulars of the land owned by the respondents are as under:

S.No.	Sy.No.	Owner Name	Extent Ac. & Cents	Village
1.	1788-90	Vepperla Sangaiah	1.76	Kongapadu
2.	1792	Cherukuri Rama Rao	1.20	Kongapadu
3.	1792	Vadlamudi Seshagiri Rao	1.20	Nagulapadu
4.	1792	Karrisetti Sitamahalaxmi	1.20	Ongole
5.	1788-90	Gudipudi Chandramouli	2.80	Kongapadu
6.	1788-90	Vepparla Brahmaiah	2.03	Kongapadu
7.	1791	Ch.Chiranjeevi	1.42	Kongapadu
8.	1788-90	Ch.Sitaramarao	1.60	Kongapadu
9.	1790/1	Kamma Subba Rao	1.65	Kongapadu

10.	1792	Paritala Hanumantha Rao	1.36	Addanki
11.	1792	Kamma Ramarao	1.00	Kongapadu
12.	1791	Mangamuri Govindamma	2.50	Nagulapadu
13.	1788/90	Ravi Ramatheertham	10.8	Kongapadu
14.	1792	A.Anjali Devi	1.00	Nagulapadu
15.	1792	Paritala Satyanarayana	1.36	Addanki
16.	1791	Challagundla Subbarao	1.40	Addanki

The agricultural operations undertaken by the respondents are entirely dependent on rain because there is no source of irrigation. They and their families are entirely dependent on the meager income earned by doing agriculture.

Faced with the threat of being deprived of the only source of livelihood because their lands were included in notification dated 11-4-2006 issued by Special Collector (Land Acquisition), Poolasubbaiah Veligonda Project, Santhapeta, Ongole (appellant No.2 herein) under Section 4(1) read with Section 17(4) of the Act and notification dated 17-4-2006 issued by him under Section 6 of the Act, the respondents filed writ petition under Article 226 of the Constitution and prayed for quashing of notifications dated 11-4-2006 and dated 17-4-2006 issued by appellant No.2. In the affidavit filed by him, respondent No.1, Vepparla Sengaiah gave the details of the land owned by all the respondents and averred that they are sought to be deprived of the land for the avowed purpose of settlement of those likely to be displaced due to the construction of Gudlakamma Reservoir Project. He further averred that there is no justification to deprive them and their

families of the source of livelihood for the purpose of rehabilitating others, more so because 20 acres of land was available in Survey No.1788/1, which was adjacent to their land. Still further, he averred that there was no justification to allot house sites to the villagers of Dhenuvukonda Village at a distance of more than 20 km. For better understanding of the case set up by the respondents, the averments contained in paragraphs 11, 12 and 14 of the affidavit of respondent No.1 are reproduced below:

“11. I further submit that myself and the other petitioners are small farmers and all the petitioners herein are filing certificates to the effect that the petitioners are small farmers. I further submit that if the lands owned by us, which are very small extent, are acquired, it will be impossible for the petitioners and their families to survive any longer. There is no rationale behind acquiring lands owned by the petitioners which are very small in extent. In this view of the matter, the impugned orders are liable to be set aside.

12. I further submit that in Survey No.1788/1, the State Government has assigned lands to the extent of 20 acres. In all fairness, the State Government ought to have acquired the said land for purposes of granting house sites since it is not the case of the State Government that the lands are required for purposes of construction of a project in which case, going for alternative land would not be feasible. I respectfully submit that since the land is being acquired for purposes of granting house sites, the same can be done wherever the Government owns lands. In this case, there is an extent of 20 acres of land in Survey No.1788/1 of Addanki Village. Thus, the State Government ought to have acquired the assigned land for purposes stated in the Notification dated 11-4-2006 and 17-4-2006. In this view of the matter, the impugned orders are liable to be set aside.

14. I further submit that as already stated above, the villagers of 8 villages which were wholly or partly submerged due to the construction of the Gundlakamma Reservoir Project have been accommodated at various places. In some cases,

the Government has treated every major in family as a family and has granted them lands individually. Thus, all the displaced persons of the aforementioned villages have been appropriately compensated by giving lands in exchange of taking away land. However, in respect of villagers of Dhenuvukonda, the displaced persons are insisting that the lands situated on the road from Addanki to Narkatpalli on the National Highway alone shall be granted in their favour. I respectfully submit that there is no public purpose involved in taking away the lands belonging to the petitioners and giving the same to the persons displaced from Dhenuvukonda Village. The villagers of Dhenuvukonda have no right whatsoever to insist for a particular land to be allotted to them. It is relevant to submit that the lands owned by the petitioners are situated more than 20 km. away from Dhenuvukonda Village. Thus, there is no rationale behind the act of acquisition and the object of granting house sites to the displaced persons. In this view of the matter, the impugned orders are liable to be set aside.”

The learned Single Judge referred to the averments contained in the affidavit of respondent No.1 and quashed notification dated 17-4-2006 by observing that the urgency clause contained in Section 17(4) of the Act has been invoked arbitrarily without any justification whatsoever and the petitioners have been deprived of their right to raise objection to the proposed acquisition and participate in the enquiry which is required to be held in the normal course. The learned Single Judge also imposed costs of Rs.21,000/- and directed that a sum of Rs.1,000/- shall be payable to each of the petitioners and Rs.5,000/- be deposited with the State Legal Services Authority.

Learned Government Pleader for Land Acquisition argued that the reason assigned by the learned Single Judge for quashing notification dated 17-4-2006 is legally unsustainable and the impugned order is liable to be set aside because providing of house

sites to displaced persons warranted invoking of urgency clause contained in Section 17(4) of the Act. He submitted that the purpose for which the land was being acquired could not brook any delay and, therefore, the enquiry contemplated by Section 5-A was dispensed with. He further argued that even if the opinion expressed by the learned Single Judge on the arbitrary nature of the decision of appellant No.2 herein to invoke the urgency clause enshrined in Section 17(4) is held as correct, the direction given by him for payment of costs should be set aside because the facts of the case did not warrant burdening the appellants with heavy costs of Rs.21,000/-.

Sri P.S.Rajasekhar, learned counsel appearing for the respondents supported the conclusion recorded by the learned Single Judge on the justification of invoking the urgency clause and argued that the respondents cannot be deprived of the only source of livelihood for accommodating the displaced persons. Learned counsel emphasized that the respondents belong to the weaker sections and poorest class of the society and this factor was altogether ignored by the appellants while acquiring their land. He then argued that the purpose of acquisition did not warrant emergent action and if an enquiry had been held under Section 5-A of the Act, the respondents could have convinced appellant No.2 that their land need not be acquired and the displaced persons can be accommodated at an alternative site.

We have considered the respective submissions. In **Narayan v. State of Maharashtra**^[1], a three Judges Bench of the Supreme Court interpreted the ambit and scope of Section 17(4) of the Act and held:

“37. We think that Section 17 (4) cannot be read in isolation from Section 4(1) and 5A of the Act. The immediate purpose of a notification under Section 4 (1) of the Act is to enable those who may have any objections to make to lodge

them for purposes of an enquiry under Section 5A of the Act. It is true that, although, only 30 days from the notification under Sec. 4 (1) are given for the filing of these objections under Section 5A of the Act, yet, sometimes the proceedings under Section 5A are unduly prolonged. But, considering the nature of the objections which are capable of being successfully taken under Section 5A, it is difficult to see why the summary enquiry should not be concluded quite expeditiously. In view of the authorities of this Court, the existence of what are prima facie public purposes, such as the one present in the cases before us, cannot be successfully challenged at all by objectors. It is rare to find a case in which objections to the validity of a public purpose of an acquisition can even be stated in a form in which the challenge could succeed. Indeed, questions relating to validity of the notification on the ground of mala fides do not seem to us to be ordinarily open in a summary enquiry under Section 5A of the Act. Hence, there seems to us to be little difficulty in completing enquiries contemplated by Section 5A of the Act very expeditiously.

38. Now, the purpose of Section 17 (4) of the Act, is, obviously, not merely to confine action under it to waste and arable land but also to situations in which an inquiry under Section 5A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5A which has to be considered.

39. Section 17 (2) deals with a case in which an enquiry under Section 5A of the Act could not possibly serve any useful purpose. Sudden change of the course of a river would leave no option if essential communications have to be maintained. It results in more or less indicating, by an operation of natural physical forces beyond human control, what land should be urgently taken possession of. Hence it offers no difficulty in applying Section 17 (4) in public interest. And, the particulars of what is obviously to be done in public

interest need not be concealed when its validity is questioned in a Court of justice. Other cases may raise questions involving consideration of facts which are especially within the knowledge of the authorities concerned. And, if they do not discharge their special burden, imposed by Section 106, Evidence Act, without even disclosing a sufficient reason for their abstention from disclosure, they have to take the consequences which flow from the non-production of the best evidence which could be produced on behalf of the State if its stand was correct.”

The Supreme Court then noted that the land was sought to be acquired for development of an area for industrial and residential purposes and observed:

“In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under Section 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under Section 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under Section 5A of the Act.”

The Supreme Court also deprecated the casual manner in which urgency clause was invoked and observed:

“Again, the uniform and set recital of a formula, like a ritual or mantra, apparently applied mechanically to every case, itself indicated that the mind of the Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed. Nothing beyond that seems to have been considered. The

recital itself shows that the mind of the Commissioner was not applied at all to the question whether the urgency is of such a nature as to require elimination of the enquiry under Section 5A of the Act. If it was, at least the notifications gave no inkling of it at all. On the other hand, its literal meaning was that nothing beyond matters stated there were considered.”

In **Union of India v. Deepak Bhardwaj**^[2], the Supreme Court considered the question whether the High Court was justified in quashing the government’s decision to invoke urgency clause for acquiring land for setting up of Growth Point at Samalkha in the State of Delhi. It was argued before the Supreme Court that the development of growth point in the area was urgently needed and, therefore, invoking or urgency clause under Section 17(4) was justified. While approving the decision of the Delhi High Court, the Supreme Court observed:

“.....If the Government cannot ensure that inquiry be expeditiously held by the Collector under S.5-A, it has to blame itself and it cannot thrust the adverse consequences in this behalf on the land owners by depriving them of their rights guaranteed under S.5-A. Further, setting up of Growth Point is a part of process of development of rural areas by creating necessary infrastructure. Such works keep going on as the society grows and these are long term measures. In fact, that is why the span has been kept as 12 years in the instant case.”

In **Union of India v. Krishan Lal Arneja**^[3], a two Judges Bench referred to the judgment in **Narayan v. State of Maharashtra** (supra), **Chameli Singh v. State of U.P.**^[4], **Om Prakash v. State of U.P.**^[5] and other judicial precedents and laid down the following propositions:

“Section 17 confers extraordinary powers on the

authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under section 5A of the Act could be completed. In other words, if power under section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority, while applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.....Urgency for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse

or gross delay on the part of the acquiring authority. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition under Section 5-A. However, the position may be different where the delay is caused or occasioned by the landowner himself."

If the order under challenge is scrutinised in the light of the above noted judgments and the factual matrix of this case with particular reference to the averments contained in paragraphs 11, 12 and 14 of the affidavit filed in support of the writ petition, which have been extracted above, it is not possible to find any flaw in the view taken by the learned Single Judge that the officer concerned had arbitrarily invoked the urgency clause under Section 17(4) of the Act and there was no justification to deprive the petitioners (respondents herein) of their valuable right to property without holding enquiry under Section 5-A of the Act, which could enable them to file objections against the proposed acquisition. Learned Government Pleader could not show that the assertion contained in the affidavit of respondent No.1 about the availability of alternative land was incorrect or that the

said land was not suitable for providing house-sites to the displaced persons. He also could not put forward any tangible argument to convince us that an enquiry under Section 5-A of the Act would have unreasonably delayed the acquisition process. Therefore, we are in complete agreement with the learned Single Judge that the decision of respondent No.2 to invoke the urgency clause is vitiated by arbitrariness.

The submission of the learned Government Pleader that the direction given by the learned Single Judge for payment of costs should be set aside sounds attractive, but in the facts of this case, we are not inclined to disturb the same because the respondents, who belong to the weakest strata of the society have been compelled to spend their hard earned money in a wholly unnecessary litigation.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.SR.No.69552 of 2006 filed by the appellants for suspending the operation of the order of the learned Single Judge is also dismissed.

G.S.SINGHVI, C.J.

October 12, 2006.

C.V.NAGARJUNA REDDY, J.

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[\[1\]](#) AIR 1977 SC 183

[\[2\]](#) AIR 2004 SC 3289

[\[3\]](#) (2004) 8 SCC 453

[\[4\]](#) (1996) 2 SCC 549

[\[5\]](#) (1998) 6 SCC 1